



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Suit 615 of 2007**

**DR. MOHAMMED ISAHAKIA.....PLAINTIFF/APPLICANT**

**-versus-**

**NATION MEDIA GROUP LIMITED.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**WANGETHI MWANGI.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**TONY KAGO.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**R U L I N G**

In the Chamber Summons dated 19<sup>th</sup> March 2008 the Plaintiff/Applicant prays that the Defence filed on 5<sup>th</sup> October 2007 by the Defendants in this suit be struck out and judgment on liability be entered for the Plaintiff against the Defendants so that the Plaintiff is at liberty to set down the suit for formal proof or assessment of damages. The Chamber Summons is brought under Order VI Rule 13 (1), (b), (c) and (d) and Rule 6A (2) of the Civil Procedure Rules.

Rules 13(1), (b) refers to a defence which is scandalous, frivolous or vexatious, while Rule 13(1), (c) is on the basis that the defence may prejudice, embarrass or delay the fair trial of the action and Rule 13(1), (d) is about a defence which is an abuse of the process of the court.

Rule 6A (2) concerns the procedure in defamation cases so that what it provides for comes into play during the hearing of the main suit and not therefore appropriate in interlocutory applications like this Chamber Summons.

It can be seen therefore that there is inappropriate or strange combination of the provisions of Order VI the Applicant is relying upon in this Chamber Summons and as a result, during the hearing the learned counsel for the Applicant, Mr. Kinyanjui, could not show how the Defence in question here was defective under each of the provisions relied upon. He completely failed to show how the Defence was scandalous and at the same time frivolous and at the same time vexatious while at the same time the said Defence could prejudice and also embarrass and go on to delay the fair trial of the suit and further be an abuse of the process of the court. On top of all that, Rule 6A (2) is superimposed. It seems to me that the tendency and love to heap and hurl all kinds of abuses/allegations at an opponent in legal proceedings takes no account of the ability of the perpetrator to prove each one of those allegations to the required standard against the maligned opponent.

That therefore gives me the courage to say that in this suit, it is indeed, this Chamber Summons which could properly be said to be scandalous, frivolous and vexatious if not an abuse of the process of the court and delaying the fair trial of the suit.

As Mr. Wetangula was looking at the pleadings, he opposed the Chamber Summons correctly pointing out that the Defence in question raised a number of triable issues such as whether the article complained of was defamatory.

The Defendants' claim to be entitled to the defences of fair comment, qualified privilege and justification, is a claim to be properly canvassed in the hearing of the main suit and not at this stage. Also to be properly canvassed at that stage is the legal effect of the whole of Rule 6A of Order VI of the Civil Procedure Rules and the singling out of sub-rule (2) of Rule 6A will therefore not do especially at this stage.

From the foregoing therefore this Chamber Summons is hereby dismissed with costs to the Defendants/Respondents.

Dated this 20<sup>th</sup> day of November 2008.

**J. M. KHAMONI**

**JUDGE**